

1 **HOFLAND & TOMSHECK**

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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 UNITED STATES OF AMERICA ,

9 Plaintiff,

9) Case Number: 2: 17-mj-01174-EJY

10 -vs-

11 DAVID HOWARD BABIT,
12 Defendant.

15 **UNOPPOSED MOTION TO CONDUCT A PRE-PLEA PRESENTENCE**
16 **INVESTIGATION REPORT**

17 COMES NOW, DAVID HOWARD BABIT, by and through his attorney of record,
18 Joshua Tomsheck, Esq., of the Law Firm of Hofland & Tomsheck and hereby moves this
19 Honorable Court (UNOPPOSED) to order the United States Department of Parole and
20 Probation to conduct a pre-plea presentence investigation report of DAVID HOWARD
21 BABIT as soon as possible.

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1 This request is based upon the pleadings and papers on file herein, the attached
2 Memorandum of Points and Authorities, and any oral argument the Court may
3 entertain.
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5 DATED this 27th day of November, 2019.

6 HOFLAND & TOMSHECK
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8 By: /s/ J. Tomsheck
9 JOSHUA TOMSHECK, ESQ.
10 Nevada State Bar No. 009210
11 228 S. 4th Street, 1st Floor
12 Las Vegas, NV 89101
13 Attorney for Defendant

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. STATEMENT OF FACTS**

16 On December 8, 2017, a Criminal Complaint was filed charging the Defendant,
17 David Howard Babit, with One (1) Count of Sexual Exploitation of Children, in violation
18 of 18 U.S.C. § 2251(a) and (e), One (1) Count of Receipt of Child Pornography, in
19 violation of 18 U.S.C. § 2252A(a)(2) and (b), and One (1) Count of Possession of Child
20 Pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B).

21 A preliminary hearing has been set for March 24, 2020.

22 **II. LEGAL ARGUMENT**

23 A presentence investigation may be initiated prior to entry of a guilty plea or nolo
24 contendere or prior to the establishment of guilt. *See generally* Fed. R. Crim. P. 32.

25 Counsel requires a pre-plea presentence investigation report to determine the
26

1 personal history category and the criminal history category applicable to Mr. Babit.

2 A pre-plea PSR will promote judicial economy and could greatly expedite the
3 manner in which this case is resolved, as this case is close to resolution by way of
4 negotiation. Furthermore, Mr. Babit consents to the pre-plea presentence investigation.
5

6 Counsel has spoken to the Government and they do not oppose the instant
7 motion.
8

9 III.CONCLUSION

10 Based on the foregoing, Defendant asks this Court to grant his Unopposed
11 Motion to Conduct a Pre-Plea Presentence Investigation Report. Defendant further
12 requests this Court order the United States Department of Parole and Probation to
13 conduct a pre-plea presentence investigation export of Mr. Babit as soon as possible.
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16 DATED this 27th day of November, 2019.
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18 **HOFLAND & TOMSHECK**
19

20 /s/ J. Tomsheck
21 JOSHUA TOMSHECK, ESQ.
22 Counsel for Defendant

23 IT IS SO ORDERED.
24

25 
26 Layna J. Zouchah
27 UNITED STATES MAGISTRATE JUDGE
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Dated: December 2, 2019